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upon is the vital and all-important human side involving reason and will. In some cases great stress is laid upon primitive and savage institutions, apparently with the notion that thus, from law in its infancy, a principle can be derived which will help to forecast what may take place in the realm of law in the immediate future. We wish it might be. The world would place upon its loftiest pinnacle of fame that person who, to-day, with the help of principles derived from the so-called evolution of law, would be able to forecast the events in the field of law within the next few years.

As an isolated illustration we notice that, in the Chapter on criteria, some twenty-six pages are devoted to the institution of Ambilian marriage, or marriage where the husband enters the wife's family, among the Malayan peoples in Sumatra. The resulting claimed demonstration is that this form of marriage must necessarily have come into existence, given all the factors operating among the Ambilian peoples of Sumatra. This does not seem to be a very fruitful principle; it is confined to the Ambilian peoples themselves as a constant quantity, besides the factors that have been discussed, and then assumes that even with them no other result could have happened. It does not tell what other peoples or races would have done under similar circumstances. This statement appears to be hardly more than a form of the logical law of identity "whatever is, is" with the implied addition "and it could not have been otherwise," which neglects entirely the human element in the equation.

No one in these days will question the influence of the factors named as elements leading to the determination of what law shall be or is at any given period. The important point, however, is that the being upon whom these factors exert their influence is not some invisible, intangible entity called law, but a volitional being, a being, having mind, will, the power, within certain physical limits, of choice, and law is the result of this choice reacting to given conditions. With this freedom of choice, to reach a real unalterable guiding principle, the question becomes one of determining why an individual or a people think as they do and not otherwise, as they conceivably might. But in a book notice we cannot go at all into the numerous problems raised by the articles. How far these volumes will promote the purposes of utility the Editors have stated may be questioned. The articles incorporated in the collection are, however, of great value as promoting the intelligent comprehension of the order of succession of known legal institutions and they make clear the enormous complexity of the process which results in any given system of law at any given time. They help to bring order out of the accomplished facts of history, to arrange them in their true order, and trace, not their evolution, but their transformation by the action of human beings. It is quite one thing to reason out a plausible explanation of what men, with their power of choice, have already done, and quite another to say how this power of choice will be exercised in the future. Quoting from Picard on the last page of the book, "History is full of guesses and hypotheses. Some are verified; others are found to be false and disappear, but Law's activity never tires and never exhausts itself." If, instead of personifying the law, we should say in its place, "The human mind, acting in the field of law, never tires and never exhausts itself," the statement would be quite accurate.

EDWIN B. GAGER.

The Law of War and Contract. By H. Campbell. London, Humphrey Milford; New York, Oxford University Press. 1918. pp. xx, 365. \$6.00.

The author of this work, who holds a judicial position in Bombay, has given us an intelligent and helpful review of more than 350 cases dealing with the law of contract as affected by war. A half dozen of these are American cases of no very recent date; the rest are almost wholly English, coming down as

late as September, 1917, more than 200 of them arising out of the present great war.

The subject matter falls entirely within the two headings *Illegality* and *Impossibility*. These are made the titles of two separate chapters; but they are equally as much involved in the other chapters. Contracts made with enemies during time of war are first dealt with, including resident enemy aliens and corporations with enemy shareholders. Next is considered the effect of war upon valid contracts between parties who became enemies after the making of the contract and upon valid non-enemy contracts. The operative effect of war and its incidents (e. g. government requisition) is considered with respect to contracts wholly executory and contracts partly performed; upon contracts containing so-called "war clauses" providing for "restraint of princes," "*force majeure*," and the like, and contracts containing no such clause; upon contracts classified under such common headings as Bills of Lading, Charter-parties, Sales of Goods, Insurance, Agency, and Bills of Exchange.

In dealing with impossibility the author follows the terminology and the reasoning of the courts implicitly, with the usual confusion as to conditions precedent and conditions subsequent, and making no distinction between impossibility of performing in accordance with duty and impossibility of fulfillment of a condition precedent to duty. This is especially apparent in the presentation of the coronation cases. Purely constructive conditions are described in terms of fiction as being tacitly intended by the parties. The courts might now much better adopt the doctrines of the Indian Contract Act, declaring impossibility a good defense in the absence of any showing as to the intention of the parties, and providing for a quasi-contractual recovery where the impossibility occurs after a beneficial part performance. There is a full presentation of those numerous cases where "impossible" shades off into "impracticable" with a tendency even to become "economically unprofitable." The existing variation may be laid largely to the existence of "war clauses" in some contracts and not in others.

The last chapter deals with emergency legislation, including D. O. R. A. but not the moratorium.

The litigation dealt with in this volume is of a sort already existing in the United States, and there will no doubt be much more of it as an aftermath of war. The present volume will be of considerable assistance to American lawyers by making the experience of the English courts easily available.

ARTHUR L. CORBIN.